

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1576 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI

and

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

GUJ STATE ROAD TRANSPORT CORPN

Versus

PRABHAVKUMAR CHANDULAL KOTAK

Appearance:

1. First Appeal No. 1576 of 1985
MS MAYA DESAI FOR MR MD PANDYA for Petitioner No. 1
MR JR NANAVALI for Respondent No. 1-7
NOTICE SERVED for Respondent No. 8

CORAM : MR.JUSTICE N.G.NANDI

and

MR.JUSTICE D.A.MEHTA

Date of decision: 27/02/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

1. This appeal under Section 110 of the Motor

Vehicles Act, is directed against the judgment and award rendered in Motor Accident Claim Petition No.109 of 1983 by the Motor Accident Claims Tribunal (Main) Junagadh partly allowing the Claim awarding compensation of Rs.1,13,800/- with 6% interest from the date of the application till realization and with proportionate cost.

2. Dependents i.e. widow and minor children of one Chandulal Parsottam filed a claim petition claiming compensation of Rs.2,29,500/- alleging that on 10.10.1982 at about 2.00 p.m. Chandulal Parsottam was riding on his bicycle on Junagadh-Bagdu State Highway. At that time opponent No.1 came driving S.T.Bus No.G.R.R.8426 in rash and negligent manner and dashed against bicycle of Chandulal Parsottam. At the relevant time opponent no.1 was driving the S.T.Bus in course of the employment with opponent no.2 GSRTC. It is stated that because of the collision cyclist Chandulal Parsottam sustained injuries. That he was removed to Junagadh Civil Hospital and two days later i.e. on 12.10.1982 Chandulal Parsottam succumbed to the injuries sustained by him in the said accident. It is the further case of the claimants that deceased Chandulal Parsottam at the time of accident was doing the business of selling Nagarvel pan and Patarvel leaves and was earning about Rs.13,000/- per year and used to pay about Rs.10,000/- for the household expenses.

3. The opponents filed written statements and denied the contents of the petition and also denied the death of deceased Chandulal Parsottam in the alleged accident. Monthly income of Rs.1300/- of deceased Chandulal has also been denied. It is contended that at the relevant time opponent no.1 was driving bus at a moderate speed on correct side of the road. A person was coming on bicycle from village Bagdu on his wrong side and therefore, opponent no.1 applied brake. In spite of this, cyclist himself dashed with the front portion of the bus and fell down sustaining injuries.

4. The Claims Tribunal appreciating the oral as well as documentary evidence found opponent no.8 driver of the S.T.Bus solely negligent in the occurrence of the accident and evaluating the income of the deceased at Rs.900/- p.m. applying multiplier of 15 years purchase factor awarded compensation of Rs.1,08,000/- and Rs.5,000/- by way of expectation of life and Rs.300/- by way of incidental expenses and Rs.500/- by way of transportation, cremation etc.

5. It is this award which is assailed by the appellant Gujarat State Road Transport Corporation by way of this First Appeal and by the claimants - respondents

by way of cross objections under Order 41 Rule 22 of the Code of Civil Procedure.

6. We have heard the submissions advanced by Ms. Maya Desai for Mr. M. D. Pandya, learned Advocate for appellant corporation and Mr. J. R. Nanavati, learned Advocate for original claimants in appeal as well as in cross objections.

7. It has been submitted by Ms. Desai for the appellant that the deceased was also contributory negligent to some extent in the occurrence of accident. Panchnama pertaining to the place of accident is at exhibit 27 in the Trial Court's record. Perusal of the same suggests that the S.T. Bus was going from Rajkot to Veraval i.e. from North to South. The tar road is 14 feet in width with kacha shoulder of 4 feet width on both sides i.e. kacha strip of the road on both sides which would suggest the total width of 22 feet east-west. The panchnama further suggests that the S.T. Bus bearing No. GRR 8426 was in a stationary condition on the right hand side of the road leading from Junagadh to Mendarda. The right front wheel of the bus was on edge of the kacha strip and right rear wheel was below tar road on the edge of the kacha strip and the rear right wheel of the bus was at the distance of 2 feet from the tar road and was on the right hand side kacha strip on the metal footpath and the rear left wheel was at the distance of 2 and 1/2 feet on the tar road from the edge of the road. The bus was facing southern direction and the rear portion was towards the north. The brake marks upto the distance of 16 feet were also found at the place of accident and above the front bumper on the left hand side body portion there was 8 feet long scratch mark and the front left head light had damaged and the body portion was also damaged. Panchnama suggests that the bicycle was on the road coming towards Junagadh and was on the kacha strip, of his left hand side of the road and the cycle was on the edge of the kacha strip.

8. Evidence of witness Bhikha Jiva has been recorded at exh. 46. Perusal of the same suggests that the witness stated in his evidence that at about 1.30 p.m. to 2.00 p.m. he was watering the crop in his field at that time the cyclist was riding the cycle on the side of his field and was going towards Junagadh. After seeing the cyclist the accident took place within a minute and after the accident when the witness looked towards the place of accident and went to the place of accident. That the bus had entered the field of this witness and in front of the bus cyclist was lying. That the field of this witness is

in the western direction whereas the road is north to south and the accident had taken place on the side of the field of this witness. Thus, according to witness exhibit 46 the bus breaking the hedge had entered his field and dashed with the cyclist who was going towards Junagadh. As seen above panchnama exh.28 suggests that after hitting the cycle bus covered the distance of about 16 feet. The brake marks were seen up to the distance of 16 feet. It is suggested from the Panchnama that correct side for the bus would be eastern half of the road and correct side for the cyclist coming from the opposite direction would be western half of the road. The panchnama suggests that the bus was not on its correct side i.e. on the left hand side of its road but it had crossed the other half of the tar road towards west and even covering the kacha portion of 4 feet width it had entered the field of witness exh.46. This would go to show that the cyclist was on the correct side of the road whereas the bus was totally on the wrong side of the road occupying the entire width of tar road and also the kacha strip of 4 feet width towards west.

9. In the impugned award, the Tribunal has awarded interest @ 6% from the date of the application till realization on the amount of compensation awarded. We are inclined to maintain 6% interest awarded by the Claims Tribunal for the reason that in the cross objections it has not been contended nor submitted by Mr.Nanavati, learned Advocate for the claimants that the

claimants are entitled to higher rate of interest. The question of exercising powers under Order 41 Rule 33 C.P.Code would arise only if no cross objections at all are filed by the respondents.

10. It is submitted on behalf of the appellant that as per exh.54 copy of FIR, the injured was smelling of alcohol at the time of accident and therefore he should be held contributory negligent in the accident. Exhibit 54 is the copy of FIR registering offence under Sections 66-B, 85(1), (2) & (3) of the Gujarat State Prohibition Act. Statement made in the FIR is nothing but an accusation for the purpose of showing the commission of alleged offence. The allegations in the FIR have not been substantiated by adducing any evidence by opponent nos. 1 and 2. The Corporation could have examined the complainant as witness before the Claims Tribunal as regards acquisitions made in the FIR exhibit 54. When the offence alleged is under Sections 66B and 85(1),(2) & (3) of the Prohibition Act, in course of the

investigation blood sample of the injured then would normally be taken and the sample would be analysed to find out contents of alcohol in the blood of the injured. There is absolutely nothing on record to suggest that the injured at the relevant time was under the influence of alcohol so as not to be able to control himself and ride the cycle properly. It may be appreciated that it is not the say of the driver of the bus that he saw the injured from a distance and that he was not riding his cycle in an orderly manner or he was not able to control cycle. In absence of such evidence or even suggestion to that effect, in our opinion, no importance can be attached to the statement in FIR exh.54 which is not substantiated by evidence before the Claims Tribunal. In our opinion, appreciating the evidence of witness exhibit 46 who was at the place of accident upon hearing the sound of collision between the bus and cyclist and considering the panchnama exhibit 27, driver of the S.T.Bus can be faulted with sole negligence as found by Claims Tribunal on appreciation of oral as well as documentary evident, we see no error or illegality committed by the Claims Tribunal in arriving at the finding that the driver of the S.T.Bus was sole negligent in the occurrence or accident and therefore we are not able to accept the contention of the appellant on this score.

11. Mr.J.R.Nanavati for the claimants while submitting for enhancement in the compensation as claimed in the cross objections has contended that income of the deceased was Rs.900/- p.m. and applying the formula of adding Rs.1800/-, dividing by 1/2 the claimant shall be entitled to additional compensation of Rs.54,000/- over and above Rs.5,000/- by way of additional amount for the loss of expectation of life.

It may be appreciated that the Claims Tribunal while awarding compensation, for the purpose of determining the loss of dependency benefit has not taken into consideration future/prospective income of the deceased. The Tribunal has calculated loss of dependency benefit taking income of Rs.900/- p.m. at the time of accident as the basis. Evidence on record also does not disclose any specific or definite evidence as regards future income of the deceased, had the deceased not met with the accident and died as the consequence thereof. It is settled legal position that in absence of any definite evidence as regards future income and the resultant loss of dependency benefit the Court has to adopt formula of taking monthly income on the date of the accident adding double the amount to the same, divided by half and deducting one-third as personal expenses of the

deceased. By this formula when there is no definite or positive evidence as regards future income of the deceased and consequent loss of dependency benefit, Rs.900/- p.m. accepted by Tribunal as income on date of the accident plus Rs.1800/- i.e. Rs.2700/- then divided by half = Rs.1,350/- p.m. $\times 12 = 16,200/-$ deducting one-third as the amount which the deceased would have spent on himself would come to Rs.10,800/-. As per birth registration certificate, exhibit 18, age of the deceased at the time of accident was 43 years-old. The Tribunal has adopted multiplier of 15 years purchase factor which is legal and proper. Now on the basis of the formula applied above, the loss of dependency benefit can be worked out at Rs.1,62,000/-. The Tribunal has awarded Rs.1,08,000/- which would suggest that the respondents-claimants would be entitled to additional amount of Rs.54,000/- by way of loss of dependency benefit.

The amount awarded under the head of loss of expectation of life as Rs.5,000/- as per the impugned award. It need hardly be said that the amount admissible to the claimants by way of loss of expectation of life would be of Rs.10,000/-. Thus, it would be seen that the claimants would be entitled to Rs.54,000/- + Rs.5,000/- i.e. Rs.59,000/- pointed out as above.

12. In view of the above the appeal deserves to be dismissed and the cross-objections are partly allowed to the above extent. The appeal is dismissed. Cross objection partly allowed. The claimants are awarded additional compensation of Rs.59,000/- + 6% with 6% interest interest from the date of application till realization. There shall be no order as to costs in appeal as well as in the cross objections. The additional amount of Rs.59,000/- with 6% interest shall be deposited by the Gujarat State Road Transport Corporation within two months from today.

(N.G.Nandi, J) (D.A.Mehta, J)

m.m.bhatt